

VOL. VIII.—NO. 139.

ANACONDA, MONTANA, FRIDAY MORNING, FEBRUARY 19, 1937.

PRICE FIVE CENTS

Stock Taking Sale

BIG BARGAINS

THIS WEEK

We take stock in February. To make the process easy we will offer for this week big reductions

On All Our Goods

A FEW EXAMPLES

A Ladies' \$40.00 Watch.....	\$30.00
A Ladies' \$20.00 Watch.....	15.00
A Gent's \$100.00 Watch.....	75.00
A Gent's \$50.00 Watch.....	38.00
A Gent's \$30.00 Watch.....	25.00
A Gent's \$10.00 Watch.....	7.00
A Gent's \$2.00 Watch.....	1.50
A \$30.00 Silver Tea Set.....	22.50
An \$8.00 Butter Dish.....	6.00
A \$10.00 Cake Basket.....	7.90
A \$4.50 Cake Basket.....	3.25

The Same Reductions on All

Lines of Goods

MAIL ORDERS SOLICITED

Leys

Jeweler and Optician

DOWLEY BLOCK

BUTTE

GOMEZ IN A POCKET.

If Havana Reports Are Correct Weyler Holds the Top Hand.

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Havana, Feb. 18.—If official reports are correct the insurgent army under General Gomez has been divided into small corps and Gomez himself is in full retreat before the continued advance of Weyler. Dispatches from Ciego de Aviel say the insurgent commander-in-chief with 4,000 men recrossed the military line in the province of Puerto Principe, extending from Jucaro to Monon, and then toward through Puerto Principe in the direction of the capital of the province, General Calixto de Garcia (Gomez's second in command) was reported four days ago in the vicinity of Puerto Principe retreating towards the same point as Gomez.

Weyler arrived yesterday at Sancti Spiritus, the most important town in the eastern part of the province of Santa Clara, near the boundary of Puerto Principe, in the territory where the insurgent headquarters were recently located. Weyler will push forward to Monon, Ciego de Aviel and Jucaro, thus seemingly sweeping across the island with a large force driving the enemy before him.

He expects to trap Gomez between the two wings of the Spanish column and force a decisive engagement before the rains put an end to military operations. The Cubans believe, however, Gomez will as usual slip through the cordon before being completely enveloped.

DREAMS TO COME TRUE.

St. Louis Inventor Claims to Have the Secret of Transmutation of Metals.

St. Louis, Mo., Feb. 18.—The dreams of alchemists are to become realities if the wonderful discoveries claimed by Benjamin Brazelle of this city, inventor and worker in the field of the sciences, are even in a measure what he claims for them. Mr. Brazelle has gone further in his experiments than the mere transmutation of metals and has made discoveries by actual experiment which overturn the entire science of chemistry, metallurgy, electricity and laws of gravitation. A company with a large capital has commenced the erection of a plant at Fair Lawn, St. Louis county, to put the discoveries to practical use. By actual test Mr. Brazelle has changed silver into gold and gold into silver. The transmutation he considers the most insignificant part of the discoveries he has made—more nothing in comparison with the feat of changing clay into gold, silver, iron, calcium, aluminum, glaucium and 15 other metals not known to science and whose qualities have not yet been determined by the discoverer. The key to the secret of all the phenomena Mr. Brazelle holds in his hand. That key is simply the full understanding of the knowledge of what electricity is, and this key he claims to have secured in his keeping.

No More Trouble in Kansas.

Topeka, Kan., Feb. 18.—Yesterday's trouble in the house was amicably settled to-day, the populists yielding to the republicans, who continued fighting for a roll call on Representative Trueblood's resolution revising the calendar. The resolution was adopted by a strict party vote. The vote stood 55 yeas, 43 nays and Speaker Pro Tem Weller declared the resolution passed. Lambert, republican, protested against the passage by less than a two-thirds vote, and the protest was ordered spread on the journal.

IT IS ALL A DREAM

Impression That Democrats Have Lost Control Altogether Wrong.

THEY WIN ON A TEST VOTE

The Report of the Steering Committee Adopted—Game and Fish Bill—Irrigation Committee Recommendations.

Special Dispatch to the Standard.

Helena, Feb. 18.—The democratic majority of the house again demonstrated to-day that they were in absolute control of its machinery. For the last few days there has been various unsubstantial rumors to the effect that in order to control the affairs of the house the democrats were obliged to truckle to the populists and to a few disaffected democrats who have been flocking with the populists on many measures. Among other fairy tales circulated was one which stated that the steering committee was afraid to bring in a report for the reason that it was sure to be ripped up the back in the house. The action of the house to-day upon the report of the steering committee put to rest all this silly talk and clearly showed that the populists had been babbling through their whiskers. The report of the steering committee was adopted by a vote of 42 to 23 and all attempts to amend were defeated. The dream-chasers of the house will have to manufacture some new fairy tales.

Following the reading of the journal, the house went into committee of the whole for the consideration of general orders. H. R. 4, requiring Typographical Union label to be used on all stationery, was taken up. McMahon proposed an amendment extending to its provisions to all kinds of labor employed on all kinds of state work. The amendment was lost by a tie vote. Lindsay of Dawson opposed the bill on the ground that it was class legislation and discriminated against non-union labor, which had rights that should be considered. If any legislation were needed it should certainly be in favor of the weaker party.

Greenfield spoke in favor of his bill pointing out that South Dakota, Washington and Oregon have similar laws and the passage of this bill would in no way affect present contracts.

O'Malley of Cascade said that the passage of this bill would put the state on record as in favor of paying living wages. McIntire of Custer expressed himself as heartily in favor of the bill. Watkins said that if it was class legislation it was in the right direction. The motion to strike out the enacting clause was put and lost and a motion for favorable recommendation was carried by a large majority.

House substitute for Clem's bill relative to more equitable division of school funds, was next taken up. Clem explained that the bill was for the purpose of giving the smaller and weaker districts larger funds and allow them longer terms. Stephens favored the bill as giving the poorer classes the same advantages. The bill was then passed by a vote of 42 to 23. Carroll also favored the passage of the bill. Lindsay of Dawson, Hill of Missoula, and Greenfield of Lewis and Clarke, opposed the bill as tending to cripple city schools. Upon a vote the bill was favorably recommended. H. R. 25, providing for a free scholarship for the Butte school of mine, was also favorably recommended for passage, as was Leach's bill relating to the larceny of gas, water or electricity for light or power.

Following recess the steering committee reported as follows:

The steering committee would recommend that the following bills be placed at the head of the calendar on general orders and be considered in the order stated:

Complete consideration of house bill No. 123, being a substitute providing for the protection of game, fish and fur-bearing animals, and then take up house bill No. 166, providing for the submission to the electors an amendment to section 5, article 3 of the constitution, relative to justices of the supreme court.

Substitute for house bill No. 45, providing for the submission to the qualified electors of the state of an amendment to the constitution relating to the method of assessment of railroads, the original having been introduced by Armistage.

House bill No. 125, to create a board of examiners to examine mine inspectors, mine foremen and fire bosses, and to define their duties, compensation, etc.

House bill No. 52, introduced by Taylor, relative to allowance of compensation to trustees of Orphans' Home.

House bill No. 34, introduced by Newton, relating to duties of pharmacists and providing for the penalties for the violation thereof.

Senate bill No. 1, providing for the erection, completion, furnishing and equipment for the University of Montana.

House bill No. 268, introduced by Bruffy.

House bill No. 253, introduced by Butler.

House bills Nos. 15 and 16, introduced by Loeb, relating to road legislation.

House bills Nos. 203, 184, 183, 193, 177, 188, 204 and 206, relating to municipal legislation.

House bill No. 86, introduced by Penwell and extending the boundaries of Lewis and Clarke county.

Kennedy of Ravalli moved that house bill 55, relating to the removal of county seats, be added to the report.

Ramsey moved to lay Kennedy's motion on the table. The motion prevailed by a vote of 42 to 23 and was a test vote on the strength of the steering committee, showing that the democratic majority was in full control of the machinery of the house and putting to rest popular fairy tales of democratic disaffection which would permit the populists to bring up any bill they desired.

Cochran, chairman of the special committee appointed to investigate the state reform school, arising to a question of personal privilege, called attention to an article by Trustee Middleton in a morning paper in which he denied the truth of the committee's report. Mr. Cochran branded Middleton's statement as a tissue of falsehoods from beginning to end and the committee was ready at any time to prove it.

The committee on irrigation reported back the sub-arid land bill with the following recommendations:

Your committee on irrigation and water rights have in the limited time at their disposal carefully considered house bill No. 273 concerning the reclama-

mation of the arid lands of the state in compliance with the Carey act, and beg leave to return same to the house with the recommendation that in consideration of its great importance and the magnitude of its scope, and also as the bill is already printed, it be placed on general orders for the consideration of the whole house. This recommendation, however, carries with it no endorsement from the members of said committee, but on the contrary we deem it our duty in recommending it for consideration to point out somewhat at length the most noticeable and objectionable features of the bill.

We deem it in its present shape exceedingly objectionable, and there is grave doubt in the minds of the members of the committee whether a bill could be framed wherein the possible benefits to accrue would warrant the state in accepting the inevitable risks. The objections merely present are:

That its present appearance in general led us strongly to suspect that it framed not so much with a view to protect the interests of the state as to serve the purpose of others interested.

That the board should consist of not less than seven members, and that they be subject to removal at the discretion of the governor.

The empowering of five men with the unlimited authority this act contemplates, and the possibility of involving the state to a large amount. The possibility and probability that settlement and the money received from sales of land will not be more than sufficient to maintain running expenses, and that the land will eventually fall into the hands of the bondholders, and if sold at all by them, could be in large amounts, and the best lands of the state would thereby be held by corporations and syndicates, to be disposed of by them as they saw fit. This would thus nullify the universal sentiment of the federal government and the state in disposing of its domain to actual settlers only and in limited amounts.

In certain sections of the state where land is held in alternate sections by the state and by a corporation, we believe opportunity for corporations to dispose of their lands to better advantage than the state could make it possible for such corporation to sell all of their land by underbidding before the state could sell any, and at the same time require the state to maintain the canal.

The fact that any sales of land the state might make with an inseparable water right, as they would be compelled to do, would sell the land all, would compel the state to maintain the canal at whatever cost. Although the implication is and the opinion seems to prevail that the state shall not be liable, the fact that the bonds are countersigned by the secretary of state, and have the great seal of the state attached to them, gives rise to grave doubt as to the ability of the state to be relieved of such responsibility; the fact also that no provision is made for the bonds to read specifically relieving the state from any liability, and the further fact that the only provision in the bill looking towards such relief specifically relates only to contracts for work done, demands the most careful scrutiny and attention.

Where the state could again be liable, would be in case of the money being exhausted before completion of work and the \$12.50 per acre limit reached, and without being able to secure more by bonds. A condition would then come to the state of a lot of land bonded, and a canal worthless until completed, and no way of completing it unless the state stepped in and made the necessary advances.

That the bonds draw interest at six per cent, payable semi-annually, and in interest coupons to draw interest at same rate which would double the principal in 12 to 14 years.

The state could give no title to settlers, without assuming the obligation of the bond.

The state must sell any corporation owning land under the canal an indefeasible right to any amount of water at a price left entirely with the commission.

It is provided that the state auditor shall examine into any accounts paid by warrant, but does not provide for examination of accounts paid by bonds.

In the exercise of the right of eminent domain, where the state is constructed through a country in which alternate sections are owned by a corporation, the right of way for such a canal might be made a large and unnecessary cost.

The proviso to sell only to settlers 160 acres each is proper, but would not apply should the canal go for the bonds which it could be held in one immense body if desired.

The commissioners give no bond, and yet may have the handling of twelve and one-half million dollars.

The proposition is simplified in considering its application to a body of land that could be owned entirely by the state, and the state would be able to take it already upon it. In applying it however to a country in which alternate sections are owned by a corporation, and by the state, and where it would be manifestly impossible to benefit the property of one without an equal benefit to the other, it would be eminently just that each should bear its share of the burden to secure the advantage.

We believe it to be a subject that demands the best consideration of a committee consisting of the whole house, and that it would be prudent to refer it to a committee of seven members in a matter of such magnitude, to recommend either its absolute adoption or rejection.

It can be improved, by amendments in the way suggested, but in curtailing the authority of the commission, their power for good would receive the same check to their power for evil. Our final recommendations are, that in its consideration, its general practicability, safety and expediency should be proven beyond a reasonable doubt, and that it would be better to delay even now than to incur any risk in an experiment on the sale contemplated by this bill.

T. C. ARMISTAGE, Chairman Committee on Irrigation and Water Rights.

The ways and means committee reported back O'Malley's anti-gambling bill with the recommendation that it be printed.

The appropriation committee, to which was referred house bill No. 222, to establish a women's annex to the Soldiers' Home at Columbia Falls, Mont., and to appropriate therefor sums of money herein named, reported the same back with the recommendation that it be indefinitely postponed.

House joint resolution authorizing the board of state prison commissioners to remove all necessary building material at the eastern state prison at Billings, Mont., to the western state prison at Deer Lodge, and making an appropriation therefor, was reported back with an amendment as follows: Amend section 2 by striking out the words "one

(Continued on Page Six)

WITHOUT AUTHORITY

Mr. Nolan Says the Ravalli County Commissioners Acted Hastily.

COUNTY TREASURERS' CASE

A Lengthy Opinion in Which the Attorney General Reviews the Controversy Between Mr. Squires and Mr. Dowling.

Special Dispatch to the Standard.

Helena, Feb. 18.—The controversy between the county board of commissioners of Ravalli county and J. K. Squires, who was elected county treasurer, is settled so far as it can be out of court, providing the board of commissioners accept Attorney General C. B. Nolan's interpretation of the law. Mr. Squires was elected treasurer by the democrats and populists of the county, defeating John Dowling, the present incumbent, who ran on the republican ticket. Although elected by a decided majority, Mr. Squires, the board ruled, was disqualified from acting as treasurer for the alleged Nolan holds that the action of the board in declaring a vacancy was without authority; that the law providing for the filing of bonds is directory and that Mr. Squires is entitled to the possession of the office. Attorney General Nolan's opinion follows:

"Your laying of the 10th of February accompanying copy of resolution referred to in said letter, came duly to hand, and would have been answered before now were it not that the questions involved were of such a character that a thorough investigation of them was deemed advisable before the resolution could be acted upon.

"If I understand the question correctly, Mr. J. K. Squires was elected to the office of county treasurer of Ravalli county, in November last; that John Dowling was and now is the incumbent of the office, being elected thereto two years ago, and ran again for the office last fall and was defeated at the polls by Mr. Squires; that Mr. Squires within ten days after notification of his election filed his oath of office and did not file his official bond until February 10th, 1937; that some time after the lapse of more than ten days after Mr. Squires received notification of his election the board of county commissioners of Ravalli county met and declared a vacancy in the office of county treasurer and appointed to fill that vacancy the present incumbent, John Dowling, his term to commence March 1st, 1937; that John Dowling upon receiving this appointment and pursuant to the provisions of the code provisions, qualified.

"In the discussion and consideration of this proposition it is desirable at the outset to call your attention to the provisions of the constitution and the codes, which have a bearing upon this question. Section 5, article XVI of the constitution is as follows: 'There shall be elected in each county the following: * * * one county treasurer.' * * * Provided that no person shall hold the office of county treasurer for more than two consecutive terms. * * * Persons elected to the different offices named in this section shall hold their respective offices for the term of two years and until their successors are elected and qualified. Vacancies in all county, township and precinct offices * * * shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election.

Section 1012 of the political code reads: 'Whenever a different time is not prescribed by law, the oath of office must be taken, subscribed and filed within ten days after the officer has notice of his election or appointment, or before the expiration of fifteen days from the commencement of his term of office when no such notice has been given.'

Section 1050 of the political code reads: 'Every official bond must be filed in the proper office within the time prescribed for filing the oath unless otherwise expressly provided by statute.'

Section 1101 of the political code reads: 'An office becomes vacant on the happening of either of the following events before the expiration of the term: (Subdivision 9) his refusal or neglect to file his official oath or bond within the time prescribed.'

"The code provisions above referred to are explicit enough, and considered by themselves would absolutely preclude Mr. Squires from entering upon the discharge of his duties under the facts in the case. Eliminating for the present from our consideration the constitutional provision above referred to, the construction of these sections of the code, supra, have been considered by different courts as to whether they are mandatory or directory. The supreme court of California holds that those sections are mandatory, and that the failure of the officer to qualify within the time prescribed ipso facto creates a vacancy, but in Washington the same sections have been under consideration by the supreme court of that state, and it is held there that these sections are directory, and that the failure on the part of the officer to comply with the law within the time designated does not create a vacancy, and that the vacancy is only created when the officer charged with authority to make the appointment acts in the premises and declares that the vacancy exists. Whether the vacancy is ipso facto created by the failure of the officer to comply with the law or whether the vacancy occurs when the proper body has declared becomes a question of trifling importance, providing the commissioners under the provisions of the constitution above referred to were authorized to declare a vacancy in the office of treasurer and in the way in which they did.

Ordinance No. 2 adopted by the constitutional convention provided that there should be elected on the 1st of Tuesday in October, 1889, one county treasurer whose office should begin on the first Monday in March succeeding his election and end on the first Monday of March, 1932. And in the election held two years ago last fall a treasurer was elected in that county whose term of office commenced on the first Mon-

day of March succeeding his election and continued for two years and until his successor is elected and qualified.

"In the particular case under consideration and by virtue of section 1101 of the political code, supra, under the facts in this case, the office of county treasurer would suffer a vacancy before the term of the present incumbent expired. This, of course, would not be possible, for the constitution provides that except as otherwise provided in the constitution, no law shall extend the term of any public officer or increase or diminish his salary or emolument after his election or appointment. The reasonable construction, then, of this section would not justify the presumption that a vacancy existed in the office before the term of the present incumbent expired. The constitutional provision above referred to that the incumbent should hold his office for the term of two years and until his successor is elected and qualified makes it impossible for a vacancy to exist until at least the expiration of the term of the present incumbent, which would be next March.

"The attorney general then defines at length the term 'vacancy' and holds that said office is not vacant so long as it is occupied by an incumbent.

"The commissioners, then, at the meeting at which they declared this office vacant, did something which, under the law, they were not authorized to do. There could possibly be no vacancy in the office of county treasurer until the board of county commissioners met, for Mr. Dowling, the duly elected and qualified incumbent of the office, was discharging the duties, and his term, by limitation, did not expire until March, 1937. It might be said in this connection that the commissioners anticipated a vacancy, but the law does not authorize the commissioners to anticipate vacancies; their powers and duties are defined by law, and anticipating a vacancy is not one of them.

"It is my judgment then that the action of the board of county commissioners in declaring a vacancy in the office of county treasurer of Ravalli county is invalid and the appointment made upon the assumption that such a vacancy existed is of course equally invalid. If the code provisions above referred to instead of using the language which they did, provided that if a person elected to an office failed to qualify within the time specified he would forfeit his right to the office, there would be no question but that the commissioners in the course pursued would have authority to act, but this is not the language used, and in this instance we have to do with a case where the will of the people in the selection of an officer is to be disregarded, and in order to set aside that will expressed at the polls the authority to do so must be declared and unambiguous. On the other hand it is not to be assumed that this proposition of the code providing for a vacancy is meaningless, and it becomes the duty of one having to do with it to place such a construction upon it in the light of the constitutional provision above referred to as will make it operative. I think that it would be within the power of the county commissioners to proceed to declare a vacancy. I am disposed to disagree with the reasoning myself, for with such a constitutional provision a person elected to an office could hold the same indefinitely, although at the polls the people decisively expressed themselves that such should not be the case. A person once elected to office could at the next ensuing election secure a nomination to declare a vacancy. 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